IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1163 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA
Versus
KB PARMAR

Appearance:
1. Special Civil Application No. 1163 of 2001
MR MS RAO for Petitioner
MR MS TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 17/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This Special Civil Application is directed against the judgement and order dated 15th November, 2000 passed in O.A. No.548/2000 by the Central Administrative Tribunal, Ahmedabad Bench.

The respondent herein namely Shri. K.B. Parmar born on 11th January, 1971 aged about 30 years was appointed as Security Assistant in the pay scale of 950-1500 on 16th June, 1995 and was posted at Palanpur, on the basis of recruitment for this post which was held at regional level of Central Intelligence Bureau, Ahmedabad. It is one of the Subsidiary Intelligence Bureau (SIB) under the Intelligence Bureau of Government of India.

Shortly after his joining at Palanpur an order was issued with regard to the transfer of the respondent from Palanpur to Nadiad (Gujarat). It is alleged that this order was issued through an Official, who was not competent nor authorised to issue any transfer order, but the respondent reported at Nadiad. Having come to know of this, the authority at State Intelligence Bureau, Ahmedabad, under whose control and supervision all the DCIOs of Intelligence Bureau in Gujarat function, instructed the authority at Nadiad not to allow the respondent to join duty at Nadiad. Aggrieved from this, the respondent had moved the Central Administrative Tribunal, Ahmedabad Bench with O.A. No. 859/1995 challenging the Department's refusal to permit him to join duty at Nadiad. This O.A was then permitted to be withdrawn by the Central Administrative Tribunal on 4.12.1995 directing that the authorities may consider the representation of the respondent sympathetically and expeditiously. The Department sympathetically considered the respondent's representation, selected him for training and respondent was advised to immediately report for duty at Palanpur and, thereafter, to proceed for training. It is alleged that this was not liked by the respondent inasmuch as he was hell bent not to work even for a day under the person, who was then incharge of the Palanpur Unit. The respondent filed a Contempt Petition being C.P. No. 24/96 in O.A. No. 859/95 before the Central Administrative Tribunal, Ahmedabad Bench alleging that the Department did not dispose of his representation in letter and spirit of the Central Administrative Tribunal's order dated 4.12.1995. However, the Central

Administrative Tribunal, after hearing the parties, did not find any reason to see any wilful disobedience on the part of the Department.

After completion of the training and upon resumption of duty at Palanpur by the respondent on the request of the respondent on 15th April, 1997 he was transferred from Palanpur to Bhuj. After the Respondent's transfer to Bhuj, he got married on 21st February, 1999. His wife is employed in the Ahmedabad Municipal Corporation as Clerk in the pay-scale of 950-1500. Therefore, the respondent gave an application for his transfer from Bhuj on 15th April, 1999 followed by a reminder dated 11th October, 1999, but no reply was received. The spouse of the respondent who was working as a clerk in Ahmedabad Municipal Corporation, also sent a request to Authority in Subsidiary Intelligence Bureau for her husband's transfer to Ahmedabad on 22nd June, 2000. In the meanwhile, a circular Memorandum dated 6th January, 2000 was issued by the subsidiary Intelligence Bureau, Ahmedabad in the matter of annual transfers and posting within Subsidiary Intelligence Bureau, Ahmedabad stating therein that it has been decided that exercise for the general transfers / postings within the Subsidiary Intelligence Bureau during the year 2000 may be started immediately so that final orders are issued by the end of February and March, 2000. It was further mentioned in the circular Memorandum issued by the Assistant Director of Subsidiary Intelligence Bureau, Ahmedabad that, requests from the officers and members of the staff are invited for consideration of the Competent Authority and the Officers and members of the Staff are therefore requested to send their representations for transfers/postings indicating station of their choice within Subsidiary Intelligence Bureau, positively by 24th January, 2000 for consideration. This Circular Memorandum was issued with the approval of the Deputy Director, Subsidiary Intelligence Bureau. In response to this Circular Memorandum, the respondent had in fact sent the letter dated 18th January, 2001 addressed to the Deputy Director of Subsidiary Intelligence Bureau, Ahmedabad requesting therein that, he had already sent his application requesting for his transfer form Bhuj to Subsidiary Intelligence Bureau, Head Quarters on 15th April, 1999 and 11th October, 1999 and as no reply has been received by Subsidiary Intelligence Bureau, Ahmedabad he reiterated his request for transfer on marriage ground. It was further stated that the respondent no. 1 was not given any reply to his earlier applications dated 15th April and 11th October, 1999, and that he may be transferred to Subsidiary Intelligence

Bureau Head Quarters, Ahmedabad during general transfer likely to take place on February - March, 2000. In view of the facts stated in his earlier applications it was also stated that, on 15th April, 2000 he would complete his normal tenure of three years at Bhuj. Thereupon, a Memorandum dated 27th July, 2000 was issued with reference to his application dated 18th January, 2000, that his request had been considered sympathetically but could not be acceded to due to administrative constraints. This order was issued by the approval of the Deputy Director, Subsidiary Intelligence Bureau, Ahmedabad. Shortly thereafter, an Order was issued by the Joint Director of Intelligence Bureau, New Delhi on 9th August, 2000 transferring the petitioner from Subsidiary Intelligence Bureau, Ahmedabad to Subsidiary Intelligence Bureau, Dibrugarh with immediate effect.

Aggrieved from this order dated 9th August, 2000, the respondent preferred an Original Application No. 540/2000 before the Central Administrative Tribunal. When the matter came up before the Central Administrative Tribunal, Ahmedabad Bench on 30th August, 2000 the Tribunal by a speaking order noticed that the transfer was in violation of rules of Government of India. A notice was issued to the respondents making it returnable on 12th September, 2000, and finding that there was a prima-facie case, the respondent therein was directed not to implement the respondent's transfer order till the next date. A written reply was filed before the Central Administrative Tribunal, Ahmedabad Bench on 11th September, 2000 under the signature of the Assistant Director, Subsidiary Intelligence Bureau, Ahmedabad seeking to traverse the claim of the respondent as was made in the Original Application.

It appears that to this reply rejoinder was filed in September, 2000 before the Central Administrative Tribunal by the present respondent. The aforesaid interim order continued throughout, and Original Application No.548/2000 was decided by the Central Administrative Tribunal, Ahmedabad Bench on 15th November, 2000 whereby the Original Application was allowed. The impugned transfer order dated 9th August, 2000 transferring the respondent from Bhuj to Dibrugarh was quashed and set-aside. The present petition is directed against this order dated 15th November, 2000. The caveat had already been entered on behalf of the respondent. However, when the matter came up before the Court on 22nd February 2001 the Counsel for the respondent could not appear before the Court. After hearing the petitioner Rule was issued in the Special

Civil Application, and the impugned order passed by the Tribunal was stayed. Subsequently, the Counsel for the respondent, who had entered caveat namely Mr. M.S. Trivedi, moved a Civil Application that he could not remain present on 22nd February, 2001 as his son had met with an accident in the school bus. The Court thereupon made it clear that observations made regarding his absence are not required to be taken serious note of in any proceedings. The matter was fixed for final hearing on 8th March, 2001, and the Civil Application filed by the Counsel for the respondent was disposed of accordingly. In pursuance of this order dated 28th February, 2001, the matter was listed for final hearing on 17th July, 2001. On 17th July, 2001 time was sought by learned Counsel for the Appellant, to seek instructions as to whether the respondents could be accommodated anywhere within Gujarat. Thereafter, when the matter came up before the Court on 7th August, 2001 it was stated by Mr.Rao, learned Counsel for the appellants that it was not administratively feasible for the appellants to accommodate the respondent employee within the State Gujarat. An additional affidavit dated 2nd August, 2001 giving details about the posting of other Security Assistants by transferring them from Dibrugarh to the places of their choice viz. Calcutta, Chenai, Patna, Bangalore etc. was also filed to show that posting was requiring at Dibrugarh. Thereupon, time was granted to the Counsel for the respondent to file a reply to this additional affidavit, and as such a reply dated 9th August, 2001 was filed. The matter was further argued on 14th August, 2001 and was posted for further arguments on 16th August, 2001. Mr. Rao, learned Counsel for the appellant also produced xerox copies of an order dated 26th August, 1985 and a Memorandum issued by the Intelligence Bureau, Ministry of Home Affairs in August, 1985 itself. The matter was therefore then posted for today.

We have heard the arguments made on behalf of both the sides at length.

So far as the challenge made by the appellant to the order passed by the Central Administrative Tribunal, on the ground that the Central Administrative Tribunal has wrongly treated the respondent to be a member of schedule cast is concerned, we may observe that the respondent himself in column No. 5 of his Bio-data answered in negative, against the question as to whether he was member of Schedule Caste/ Tribe. Mr. Trivedi, learned Counsel for the respondent has also submitted that the appellant's Counsel is right in saying that the

Central Administrative Tribunal has erroneously mentioned that the respondent was a member of schedule caste. Mr. Trivedi, has submitted that in fact, he had not even argued that the respondent was a member of Schedule Caste, and it appears that simply because the surname of the respondent is Parmar, the member of the Central Administrative Tribunal may have entertained a wrong impression that he belongs to schedule caste because Parmar is also a schedule cast, in the State of Gujarat. Therefore, we find that it was erroneously mentioned by the `CAT' in the impugned order that the respondent belongs to Schedule Caste.

The learned Counsel for the appellant also submitted that, Central Administrative Tribunal had wrongly treated the respondent to be a holder of Group `D' post and the case of the appellant is that in fact the respondent belongs to Group `C', and in order to show that the post of Security Assistant has now been classified in Group C, he has pointed out that it is evident from the order dated 26th August, 1988 coupled with the memorandum which was issued by Intelligence Bureau in August, 1985, that it was a Group `C' post. It is therefore very clear that the respondent could not be treated to be a employee of Group`D', and he belongs to Group `C', as the post of the Security Assistant has been classified in Group `C'. The question of Group `D' assumes importance in the context that the employees who are working in Group `D' are not transferable, whereas, the employees in Group `C' are transferable all over the country. It was also pointed out by Mr. Rao that in the appointment order giving appointment to the respondent as Security Assistant, it was clearly mentioned that he was liable to be transferred anywhere in India and it has been submitted that the present impugned order of the transfer of the respondent had been issued by the Head Office. In this context, it was also submitted that the finding of the Tribunal that the transfer order suffers from the legal malice has no basis and the transfer order transferring the respondent from Bhuj under Subsidiary Intelligence Bureau, Ahmedabad to Subsidiary Intelligence Bureau, Dibrugarth was passed after considering the administrative necessities and purely in public interest. The finding of the Central Administrative Tribunal has been challenged by the learned Counsel for the appellant by saying that the impugned transfer was made neither for any purpose not authorised under law, nor for any purpose which can be said to be not permissible under law.

While examining this contention as has been

raised before us, we find that, so far as the transfer to any place throughout the country is concerned, the appellant did have the power to transfer the respondent any where throughout the country. However, the matter has to be examined on the anvil of the exercise of the power to transfer. In this context the relevant circular memorandum dated 6th January, 2000 has been produced by the learned Counsel for the appellant himself in all fairness before this Court. In order to examine this aspect of the matter, we had also asked Mr. Rao, learned Counsel for the respondent as to whether the file in which the transfer matter in this has been dealt with was available or not, so that this question could be examined in detail, but the file is not available with Mr.Rao, though the concerned Officer, from the department is present in the Court. In any view of the matter, the fact is that the respondent is a young man aged about thirty years who had married recently in the year 1999 and was working in the pay-scale of 950-1500. There are large number of posts of Security Assistants all over the country at different places under different Subsidiary Intelligence bureau including Gujarat. Mr. M.S. Trivedi, also invited our attention to the Office Memorandum dated 12th June, 1997 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Government of India. The copies of this Office Memorandum have been sent to the Ministry / Department of the Government of India, Department of Women and Child development, the National Commission for Women. This Memorandum had been issued regarding the need to post husband and wife at the same station. Contents in paragraph 1 to 4 of this memorandum dated 12th June, 1997 (page 43 of the paper book) are reproduced as under:-

(1) The undersigned is directed to say that on the subject mentioned above, Government had issued detailed guidelines vide OM No. 28034/86-Estt. (A) dated 03.04.1986. The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organisation at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are over 10 years of age.

(2) The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in OM No. 28034/7/86-Estt(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence.

(3) It is further clarified that even in cases where only the wife is a government servant, the concession elaborated in para 2 of this OM would be admissible to the government servant.

(4) These instructions would be applicable only to posts within the same department and would not apply on appointment under the Central Staffing Scheme.

As a matter of fact this office memorandum has been issued in the context of guidelines dated 3rd April, 1986 stating that the husband and wife should be posted at the same station. It is very clear from the reading of this memorandum that the Ministry/Departments are required to strictly adhere to the guidelines laid down in the earlier Office Memorandum dated 3rd April, 2000 while deciding on the request for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are ten years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence.

Therefore, in normal course, the request as had been made by the respondent for his transfer to Ahmedabad ought to have been accepted as stated in the Office Memorandum. However, Mr. Rao has referred to paragraph 4 of Office Memorandum and has submitted that it is applicable only to the posts within the same department and whereas the spouse of the respondent was not working in the same department, this Office Memorandum is not applicable. He has also referred to the earlier office memorandum dated 3rd April, 1986 and has submitted that

the respondent's spouse was working in Ahmedabad Municipal Corporation which is neither a State nor public sector undertaking, and therefore it cannot be said to be a service under the State Government. These reference has been made to Clauses 5, 6 and 7 stating that the Ahmedabad Municipal Corporation is not a public sector undertaking. We find that the spirit of the memorandum is very clear that a proper accommodation has to be given when the spouse is working women. Ahmedabad Municipal Corporation is a part and parcel of the Local Self Government and it can't be taken out of the purview of the relevant memorandum against it's spirit by hairsplitting approach. The Office Memorandum is issued with an object as is mentioned in the body of the Office Memorandum itself that the husband and wife may invariably be posted at the same station in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are over 10 years of age. Mr. M.S. Trivedi, has pointed from the record of these proceedings that the respondent has only 18 months old child. Besides this, we also find that under the Circular Memorandum dated 6th January, 2000 the option was invited for three places of choice within the Subsidiary Intelligence Bureau of Gujarat. There is no doubt that the respondent wanted to be transferred only at Ahmedabad because his wife was employed in Ahmedabad Municipal Corporation, and such requests was not accepted too. However, we find that, instead of giving three alternative places for posting in the Subsidiary Intelligence Bureau, Gujarat, the respondent has gave only one place of choice i.e Ahmedabad as his wife was working in Ahmedabad Municipal Corporation. According, to the policy in the Office Memorandum referred to hereinabove, and the spirit of policy decision reflected in the Office Memorandum, and in view of the circular memorandum dated 6th January, 2000 even if the respondent had opted only for Ahmedabad, he could still and certainly be considered for stations other than Ahmedabad within the Subsidiary Intelligence Bureau, Gujarat itself. No doubt, in the further affidavit which was filed, it was pleaded that in certain cases the Security Assistant had been transferred even subsequent to the transfer of respondent to Debrugarh and as many as seven Security Assistant who were serving at Debrigarh came to be transferred at different places such as Calcutta-IB, Head Quarter-Delhi, Chenai, Patna, Bangalore, and further that as many as seven employees who were working at Trivandrum, Kohima, Itanagar, New Delhi, Patna, Aizwal, Guwahati had been transferred to New Delhi, Jaipur, Jamshedpur, ITBF Chandigarh during the period 18th August, 1999 to 19th July, 2001. However,

these places were the places of their choice and on that basis we do not find any case of compelling reason so as to transfer of the respondent & low paid employee out of State of Gujarat to a far away place of Debrugarh when it has not been controverted before us that in past two decades not a single Security Assistant has been transferred to such a farflung place. It is in fact a great hardship for a employee of lower cadre working in a pay-scale of 900-1500 to be transferred to such a distant place. We do not mean to say that there is no power with the respondent to transfer the petitioner to such a distant place and it is obvious that he could be transferred at any place, but the power of transfer has to be exercised in a reasonable manner and in light of the policy laid down through the memorandums as aforesaid. Therefore, we find that looking to the totality of the facts and circumstances of the present case, the appellant had to conside the applications of the respondent and his wife's representation, in the light of the aforesaid guidelines as contained in the memorandum. Upon service of the transfer order the respondent stands relieved from Bhuj and he could not be said to be on the rolls of the Bhuj unit. In such a fact-situation the grounds which are taken so as to make out a case of legal malice in the impugned order of Central Administrative Tribunal may not be sufficient to make out a case of malice in law but the power has to be exercised in a reasonable manner without any arbitrariness in accordance with law and the Circulars issued by the Government in this regard from time to time. In the instant case, even the issue of the circular dated 6th January, 2000 makes it clear that the task of transfer was to be undertaken within the State of Gujarat and coupled with the office memorandums issued in the matter of the posting of the persons or spouse who are employed and working in different exigencies, it has not been explained in any manner at any stage either before Central Administrative Tribunal or even before this Court as to why it was not possible to keep the respondent at Ahmedabad or at any other place within the Subsidiary Intelligence Bureau, Gujarat itself and what were the compelling reasons in public interest or otherwise strong administrative reasons so as to send him to Dibrugrarh. We therefore find that looking to the factual position, this case in strict sense of the term may not be a case of legal malice, but it is certainly a case of exercise of power arbitrarily and without application of mind. We also do not find that a case of administrative exigency had been made out. Accordingly, we find that there is no case for interference with the orders passed by the Central Administrative Tribunal,

against the impugned transfer order.

Whereas, the interim order protecting the respondent had continued throughout the pendency of the proceedings before the Central Administrative Tribunal, and thereafter till the final order of Central Administrative Tribunal was stayed by this Court on 22.2.2001, now that this petition against the Central Administrative Tribunal's order fails before us, we order that now in accordance with the decision of the Central Administrative Tribunal appropriate orders shall be passed by the concerned Authority immediately within reasonable time, giving posting to the respondent preferably at Ahmedabad or at any station within the State of Gujarat.

This Special Civil Application has no merit and the same is hereby rejected. Rule is hereby discharged with no orders as to costs.

Since the main petition has been rejected and the Rule is discharged, the stay order dated 22nd February, 2001 automatically comes to an end and ceases to be operative forthwith.

(M.R. CALLA,J.)

(N.G. NANDI,J.)

siji